

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
GALLATIN RIVER BASIN (41H)
PRELIMINARY DECREE

* * * * *

CLAIMANTS: Brown Family Trust; Double T Yankee Creek
LLC; Aaron M. Eilers; Scott G. Foster; William
B. Holland; Margaret M. Kachadurian
Revocable Trust; Marti Klette; Clay Morton;
Kellie Morton; Cody C. Morton; Yankee Creek
LLC; Lyn E Morton; Robert D. Morton; Carly
A. Noe; James L. Noe; **Kash Kundert; Dillon
Kundert; Peter Kachadurian**

CASE: 41H-0619-R-2022
41H 210836-00
41H 210837-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Claims 41H 210836-00 and 41H 210837-00 appeared in the Preliminary Decree for Basin 41H with an issue remark stating a split/sever request was pending. On August 26, 2022, Department of Natural Resources and Conservation (DNRC) filed a Memorandum with the Court requesting an additional split. The claims were consolidated into Water Court Case 41H-619-R-2022.

FINDINGS OF FACT

1. On October 7, 2022 the Water Court held a status conference and the parties requested the split requests be dismissed but the ownership of the claims be updated to add new claimants.
2. Deeds supplied by counsel show that in 2016 Kash and Dillon Kundert were transferred a portion of Marti Klette's property.
3. On July 28, 2022, Margaret M. Kachadurian Revocable Trust transferred a portion of its property to Peter Kachadurian.
4. Cody Morton is in the process of transferring her property to a family member but will do that ownership update through the DNRC rather than the Water Court.
5. The other issue remark on the claims states the DNRC made changes to the point of diversion and ditch name and if no objections were filed, the remarks would be removed. No objections were filed. The remarks have served their purpose of providing notice of potential issues and can be removed.

CONCLUSIONS OF LAW:

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, 85-2-102(13), MCA.
2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA.
3. Prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is

incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

4. The degree or weight of evidence needed to contradict or overcome the prima facie proof statute is a preponderance of the evidence. *Burkhartsmeier et al. v. Burkartsmeier et al.*, Case 40G-2, (MT Water Court Memorandum Opinion and Order Adopting Master's Report, Mar. 11, 1997). The Montana Supreme Court has defined preponderance as "a relatively modest standard that the statutory criteria are 'more probable than not' to have been met." *Hohenlohe v. State*, 2010 MT 203 ¶ 33, 357 Mont. 438, 240 P.3d 628.

5. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

6. The Motion's analysis of the chain of title and attached deeds indicates that Kash and Dillon Kundert and Peter Kachadurian are also owners of claims 41H 210836-00 and 41H 210837-00.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above for claims 41H 210836-00 and 41H 210837-00.

Post Decree Abstracts of Water Right Claims are served with this Report to verify the changes have been made in the State's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Brown Family Trust
Roy A. and Karen M. Brown Trustees
70 Cliff Manor Ln.
Gallatin Gateway, MT 59730

Double T Yankee Creek LLC
P.O. Box 870
Ross, CA 94957

Aaron M. Eilers
970 E. Williams Rd
Gallatin Gateway, MT 59730-9720
~~71 Ridgeline Ln.~~
~~Bozeman, MT 59718-8287~~

Scott G. Foster
P.O. Box 160130
Big Sky, MT 59716

William B. Holland
18400 Yankee Creek Road
Gallatin Gateway, MT 59730

Clay Morton
Kellie Morton
480 E. Williams Rd.
Gallatin Gateway, MT 59730

Yankee Creek LLC
1199 Yankee Creek Spur Rd
Gallatin Gateway, MT 59730-8574

Lyn E Morton
Robert D. Morton
450 Williams Road East
Gallatin Gateway, MT 59730

Carly A. Noe
James L. Noe
6511 Bridle Way Dr.
College Grove, TN 37046

Service Via Electronic Mail:

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Bina R. Peters
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office@riverandrangelaw.com

Note: Caption updated 1-26-23

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H

Water Right Number: 41H 210836-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners:

KACHADURIAN, MARGARET M REVOCABLE TRUST
% MARGARET M KACHADURIAN, TRUSTEE
PO BOX 667
GALLATIN GATEWAY, MT 59730 0667

CODY C MORTON
PO BOX 164
GALLATIN GATEWAY, MT 59730 0164

CLAY MORTON
480 E WILLIAMS RD
GALLATIN GATEWAY, MT 59730

KELLIE MORTON
480 E WILLIAMS RD
GALLATIN GATEWAY, MT 59730

MARTI KLETTE
17101 WILSON CREEK RD
GALLATIN GATEWAY, MT 59730 8761

ROBERT D MORTON
450 WILLIAMS ROAD EAST
GALLATIN GATEWAY, MT 59730

LYN E MORTON
450 WILLIAMS ROAD EAST
GALLATIN GATEWAY, MT 59730

SCOTT G FOSTER
PO BOX 160130
BIG SKY, MT 59716

WILLIAM B HOLLAND
18400 YANKEE CREEK ROAD
GALLATIN GATEWAY, MT 59730

DILLON KUNDERT
PO BOX 303
GALLATIN GATEWAY, MT 59730

KASH KUNDERT
394 SHELTER GROVE CIR
BOZEMAN, MT 59718

YANKEE CREEK LLC

450 WILLIAMS RD E
GALLATIN GATEWAY, MT 59730

Owners:

AARON M EILERS
71 RIDGELINE LN
BOZEMAN, MT 59718 8287

BROWN FAMILY TRUST
ROY A. AND KAREN M BROWN TTEES
70 CLIFF MANOR LN
GALLATIN GATEWAY, MT 59730

JAMES L NOE
6511 BRIDLE WAY DR
COLLEGE GROVE, TN 37046

CARLY A NOE
6511 BRIDLE WAY DR
COLLEGE GROVE, TN 37046

DOUBLE T YANKEE CREEK LLC
PO BOX 870
ROSS, CA 94957

PETER KACHADURIAN
3110 SUMMER VIEW LN
BOZEMAN, MT 59715

***Priority Date:** JUNE 1, 1872

***Type of Historical Right:** DECREED

***Purpose (use):** IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

***Flow Rate:** 2.02 CFS

***Volume:** 727.65 AC-FT

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 205.00

***Source Name:** WEST FORK WILSON CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSWSE	35	3S	4E	GALLATIN

Period of Diversion: MAY 1 TO NOVEMBER 4

Diversion Means: HEADGATE

Ditch Name: FROST DITCH

***Period of Use:** MAY 1 TO NOVEMBER 4

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	130.00		NE	34	3S	4E	GALLATIN

2	75.00	N2SE	34	3S	4E	GALLATIN
Total:	205.00					

Remarks:

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41H 138793-00.

SPLIT CLAIM NO. 41H 30108541 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H

Water Right Number: 41H 210837-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: KACHADURIAN, MARGARET M REVOCABLE TRUST
% MARGARET M KACHADURIAN, TRUSTEE
PO BOX 667
GALLATIN GATEWAY, MT 59730 0667

CODY C MORTON
PO BOX 164
GALLATIN GATEWAY, MT 59730 0164

CLAY MORTON
480 E WILLIAMS RD
GALLATIN GATEWAY, MT 59730

KELLIE MORTON
480 E WILLIAMS RD
GALLATIN GATEWAY, MT 59730

MARTI KLETTE
17101 WILSON CREEK RD
GALLATIN GATEWAY, MT 59730 8761

ROBERT D MORTON
450 WILLIAMS ROAD EAST
GALLATIN GATEWAY, MT 59730

LYN E MORTON
450 WILLIAMS ROAD EAST
GALLATIN GATEWAY, MT 59730

WILLIAM B HOLLAND
18400 YANKEE CREEK ROAD
GALLATIN GATEWAY, MT 59730

DILLON KUNDERT
PO BOX 303
GALLATIN GATEWAY, MT 59730

KASH KUNDERT
394 SHELTER GROVE CIR
BOZEMAN, MT 59718

YANKEE CREEK LLC
450 WILLIAMS RD E
GALLATIN GATEWAY, MT 59730

AARON M EILERS

71 RIDGELINE LN
BOZEMAN, MT 59718 8287

Owners:

BROWN FAMILY TRUST
ROY A. AND KAREN M BROWN TTEES
70 CLIFF MANOR LN
GALLATIN GATEWAY, MT 59730

JAMES L NOE
6511 BRIDLE WAY DR
COLLEGE GROVE, TN 37046

CARLY A NOE
6511 BRIDLE WAY DR
COLLEGE GROVE, TN 37046

DOUBLE T YANKEE CREEK LLC
PO BOX 870
ROSS, CA 94957

PETER KACHADURIAN
3110 SUMMER VIEW LN
BOZEMAN, MT 59715

***Priority Date:** JUNE 1, 1874

***Type of Historical Right:** DECREED

***Purpose (use):** IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

***Flow Rate:** 302.38 GPM

***Volume:** 242.55 AC-FT

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 205.00

***Source Name:** WEST FORK WILSON CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSWSE	35	3S	4E	GALLATIN

Period of Diversion: MAY 1 TO NOVEMBER 4

Diversion Means: HEADGATE

Ditch Name: FROST DITCH

***Period of Use:** MAY 1 TO NOVEMBER 4

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	130.00		NE	34	3S	4E	GALLATIN
2	75.00		N2SE	34	3S	4E	GALLATIN

Total: 205.00

Remarks:

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41H 138793-00.

SPLIT CLAIM NO. 41H 30108542 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.